

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CHARLES LANGONE, as FUND MANAGER )  
of the NEW ENGLAND TEAMSTERS AND )  
TRUCKING INDUSTRY PENSION FUND )

Plaintiff, )

v. )

HOME FOOD MARKET, INC., AND PETER )  
S. HILL AS PRESIDENT OF HOME FOOD )  
MARKET, INC., )

Defendant. )

C.A. No. 04CV11526 NG

PLAINTIFF'S MOTION FOR A DEFAULT JUDGMENT AS AGAINST HOME FOOD  
MARKET, INC., AND MEMORANDUM IN SUPPORT THEREOF

Plaintiff respectfully moves upon his attached Declaration pursuant to Federal Rule of Civil Procedure 55(b)(1) for entry of judgment by the Clerk in the amount of \$ 108,292.92.

In support of his motion, Plaintiff states as follows:

1. Defendant Home Food Market, Inc., neither filed an answer nor served a responsive pleading in this action and, accordingly, was defaulted on September 27, 2004.

2. This is an action under the Employee Retirement Income Security Act, 29 U.S.C. §1001 *et seq.* for unpaid withdrawal liability. Pursuant to 29 U.S.C. §1451(b), failure to make withdrawal liability payments is treated like "delinquent contributions," for which the following elements of relief are mandatory under 29 U.S.C. 1132(g)(2):

- (a) the unpaid contributions,
- (b) the interest on the unpaid contributions,
- (c) an amount equal to the greater of--
  - (i) interest on the unpaid contributions, or
  - (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

- (d) reasonable attorney's fees and costs of the action, to be paid by the defendant, and
- (e) such other legal or equitable relief as the court deems appropriate.

3. Defendant Home Food Market, Inc., in this action became liable for the full amount of its withdrawal liability of \$88,036.00 on July 11, 2004. Consequently, Plaintiff is entitled to interest from that date in the amount of \$1,179.69 at a rate determined by the Pension Benefit Guarantee Corporation pursuant to 29 C.F.R. §4219, liquidated damages in the amount of \$17,607.20 (20% of principal) and costs and attorneys fees in the amount of \$1,470.03 for a total amount owed of \$108,292.92 (Langone Declaration, ¶2, Campbell Affidavit, ¶5).

4. Defendant Home Food Market, Inc., is neither an infant nor an incompetent person nor in the military service of the United States.

WHEREFORE, Defendant's Motion for Entry of a Default Judgment against Home Food Market, Inc., should be granted.

Dated: October 13, 2004

Respectfully submitted,  
Catherine M. Campbell  
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/S/ Catherine M. Campbell  
Attorneys for Plaintiff,  
Charles Langone

Certificate of Service

I, Catherine M. Campbell, attorney for the plaintiff, hereby certify that on this day I mailed a copy of the within document by first class mail, postage prepaid, Kevin Hern, Jr., Esq., Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02108 and Peter S. Hill, President, Home Food Market, Inc., PO Box 26, Milford, MA 01757.

Dated: October 13, 2004

/S/ Catherine M. Campbell  
Catherine M. Campbell